MONTANA LEGISLATIVE HISTORY

Chapter 178 19 59

Bill H 480 S _____ Original bill & history ___C

H. Committee on Boating and Insurance			S. Committee on Relief and Social Security		
Hearing Date(s)	Feb 12	✓ C	Hearing Date(s)	Feb 21	✓ C
	_____	___C		Feb 24	✓ C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Feb 12	✓ C		Feb 24	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

BANKING AND INSURANCE

February 12, 1959

The Committee on Banking and Insurance met on recess with a quorum present. (See Roll Call). Majority Floor Leader Ceroviski sat in on the meeting.

HB #480 was discussed. Appearing for this bill were Bill Clark, Treasure State Life Insurance Company; and Walter Nilan, State Manager for Farmers Insurance Group. After Committee discussion, Paulson moved HB #480 do pass. Motion seconded by Jardine and carried.

HB # 372 and #373.
HB #372 - Holtz appeared before the Committee and discussed this bill. David Bryan, Great Falls, Credit Union League. (Discussed a proposed amendment - see Committee Report). After Committee discussion, Jardine moved that HB #372 be amended by striking in the original bill after the comma following word "act" on line 11, the words "and that the character and general fitness of the incorporators are such as to warrant his approval". Motion seconded by Schwinden and carried. Schwinden moved to amend #372 in the title of the original bill after the word "State" by adding the words "Repealing all Acts and parts of Acts in conflict herewith", and further amend this bill by adding Section 2 to read: "All Acts and parts of Acts in conflict herewith are hereby repealed." Motion seconded by Jardine and carried. Jardine then moved HB #372 as amended do pass. Motion seconded by Curry and carried.

HB #373 - Raundal moved this bill do not pass. Seconded by Rindy and motion carried.

HB #431 - Clyde Gummow from the Insurance Department appeared before the Committee and discussed this bill. After Committee discussion, Jardine moved this bill do pass. Motion seconded by Curry and carried.

HB #389 - Hugh Massman, representing Public Employees, appeared as a proponent for this bill. Keith Anderson, representing Taxpayers' Association, appeared as an opponent. After Committee discussion, Jardine moved this bill do not pass. Motion seconded by Curry and carried.

HB #313 - Ceroviski discussed this bill with the Committee and it was agreed that either HB #313 or HB #123 be made into one bill. Wesley W. Wertz appeared also on this bill.

HB #89 - Curry discussed the proposed amendments on this bill. (See Committee Report). Schwinden moved this bill be amended. Motion seconded by Jardine and carried. Nichols then moved HB #89 be passed as amended. Motion seconded by Curry and carried.

It was moved and seconded to adjourn.

Leonard D. Regan

Regan, Chairman

Senator Streeter: Not having accumulated 10 or more years, he could just work 1 year, then he would come under it?

Mr. Casey: Yes, the actuary Mr. Young, has approved this bill. The state neither gains or looses by it.

Senator Clark: It would be based upon the amount he paid in?

John Sasek: Secretary of the Public Employees Retirement System. I think you can get a better picture of what this provides to do by looking at these annuity tables. I might say that this is not supported by the retirement system in itself, but by the Montana Employees Association. As you look at the chart that we have here, the person must have $1,000 in the retirement system so if he has this in, to gather the advantage of this table, for each $1,000 in the system, the contributions drawn at 3% computed annually, the person will receive at age 66, he would receive $15.65 for each $1,000 in the system.

Senator Clark: What would he be able to draw if he had 9 years in and $1,000?

Mr. Sasek: The same amount. Its "amount" that governs here and not the "years". At 66 he would draw $66.65 a month.

Senator Brownfield: What basis are you figuring here, on male and female?

Mr. Sasek: On life expentancy basis, the women outlive the men by 5 years consequently they pay the higher rate. They get less because we have 5 years in which to pay it. It is $18.73 for women and men $15.65.

Senator Brownfield: What is the life expectancy, 77 and 82?

Mr. Sasek: No, 85 and 80.

Mr. Floyd Young: Actuary for the Board of P.E.R.S. Actually the whole point is here, that if a man is compelled to quit because of a change in administration at the age 65, he is entitled to whatever his own money will buy plus his equally accumulated amount, from the state. It will not cost the state money to do that. The mortality table says that a women does live 5 years longer than a man and the table we are using here is of 1937, we should set the male table back one and the female back six on the current mortality.

House Bill No. 480:

Wm. Clark: Representing Treasure State Life Insurance Company. This amendment to the present statutes is very brief in what it does, it exempts life insurance agents and real estate agents from the term 'employment' where the services performed by them is paid solely by commissions and without guarantee of minimum earnings. In 1941 there was a rule that they were not under the provisions of this act. Because of this question, we are trying to clarify the act right now. 480 is a direct copy of the provisions of Senate Bill No.2 as they are pertinent to this particular section. Also I can see no objection

to clarifying this one point, they are all licensed to seel insurance for any number of companies they want to.

Walter Nilan: Representing the Farmers Insurance Groups in Helena. The group includes Farmers Insurance Exchange, Truckers Insurance Exchange, Fire Insurance Exchange, and New world Life Insurance Company. We say the same situation applies to insurance agents no matter what type of insurance they are writing, if they are on a commission basis. As we say they are and the Federal Government says they are, independent agents and not employees.

House Bill No. 491:

Chadwick H. Smith: Unemployment Compensation Commissioner. This covers the same subject as contained in 480 and Senate Bill 2. There are two bills to exclude real estate and insurance salaries as covered b the unemployment compensatio law. They are writtein in a little different form. 480 is in the best form, and it won't be necessary for the committees to pass both bills as 480 and S. B. 2 werein identical form. However S. B. 19 includes additional matter besides what is included in 480. 491 was needed because the others lacked the inclusion of real estate and insurance agents.

House Bill 357:

Al Root: Representing the State A.F.L.- C.I.O. This bill is the same as S. B. 18, I think it is identical and on the same subject matter as Senate Bill 2. Dealing with disqualifications.

Senator Clark: The Rules Committee is in session now to clarify the point where bills are introduced in both Houses which does the same thing, as in the case of 357 and Senate Bill 18. We are doing that all the time and I think perhaps we should "pass action" on this until we get a rule on this from the Rules Committee. An attorney was consulted on this but this was a matter for the House and Senate, so without objection we will pass action on this until we hear from the Rules Committee. Is there any objection to passing consideration on 357? (No objection).

House Bill 348:

Chadwick Smith: Unemployment Compensation Commissioner. This was introduced to exclude from unemployment insurance coverage, certain part-time employees. This was not a commission bill but we find nothing wrong with it. Covers certain part-time employees who are employed by charitable, religious and non-profit associations. The reason for this bill is that we have instances where certain employees of some service clubs, where they are hired to do bookkeeping for clubs at a small monthly salary and are paid about $500 a year, so that the individual does have another job. Because of this little job, we see no reason why they should have to pay the tax on the part-time job.

Joe Crosswhite: Would that include labor unions where they hire someone for a day, or a week?

Senator Ruane moved that since we note that Education has requested House Bill 450, it be rereferred to the Committee on Education, seconded by Senator Streeter. Motion carried.

Senator Keister moved that House Bill 491 "be concurred in", seconded by Senator Siderius. Motion carried.

Senator Siderius made a motion that House Bill 448 "be concurred in", seconded by Senator Ruane. Motion carried.

Senator Siderius made the motion that House Bill 320 "be concurred in", seconded by Senator Streeter. Motion carried.

Senator Streeter moved that House Bill 348 "be concurred in", seconded by Senator Siderius. Motion carried.

Senator Streeter moved that House Bill 431 "be concurred in", seconded by Senator Siderius. Motion carried.

Senator Siderius moved that House Bill 432 "be concurred in", seconded by Senator Streeter. Motion carried.

Senator Ruane moved that House Bill 433 "be concurred in", seconded by Senator Keister. Motion carried.

Senator Keister moved that House Bill 434 "be concurred in", seconded by Senator Ruane. Motion carried.

Senator Siderius moved that House Bill 480 "be concurred in", seconded by Senator Ruane. Motion carried.

Streeter made the motion that House Bill 182 "be not concurred in" but withdrew her motion and made the substitute motion that we pass it over until tomorrow until we can obtain Mr. Faust's position on this bill, seconded by Senator Ruane.

Ruane excused.

Senator Clark made a motion to pass action on all 6 bills still in committee. The motion was made by Senator Streeter, seconded by Senator Siderius. Motion carried.

The meeting adjourned at 5:20 p.m.

Clark
Chairman

under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

Employment in distribution of newspapers.

(l) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by any individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

"Employment office" defined.

(k) 'Employment office' means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the commission may approve.

"Fund."

(l) 'Fund' means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

"State."

(m) 'State' includes, in addition to the states of the United States of America, Alaska, Hawaii, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada."

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 7, 1959.

CHAPTER 178

An Act to Amend Section 87-148 of the Revised Codes of Montana, 1947, as Amended by Chapter 171, Laws of Montana, 1957; Excluding from the Term Employment, as Defined by the Unemployment Compensation Law, Services Performed by Certain Real Estate and Insurance Salesmen; Repealing All Acts and Parts of Acts In Conflict Herewith; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That section 87-148 of the Revised Codes of Montana, 1947, as amended by chapter 171, laws of Montana, 1957, be, and the same is hereby amended to read as follows:

Definitions.

"87-148. **Definitions.** As used in this act, unless the context clearly requires otherwise:

"Annual payroll."

(a) (1) 'Annual payroll' means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

"Average annual payroll."

(2) 'Average annual payroll' means the average of the annual payrolls of an employer for the last three (3) or five (5) preceding calendar years, whichever average is higher.

"Benefits."

(b) 'Benefits' means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

"Base period."

(c) 'Base period' means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

"Benefit year."

(d) 'Benefit year' with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year.

"Calendar quarter." (e) 'Calendar quarter' means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

"Commission." (f) 'Commission' means the unemployment compensation commission established by this act.

"Contributions." (g) 'Contributions' means the money payments to the state unemployment compensation fund required by this act.

"Employing unit." (h) 'Employing unit' means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

"Employer." (i) 'Employer' means: (1) Any employing unit which for some portion of a day in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, has or had in employment, one or more individuals (irrespective of whether the same individuals are or were employed in each such day); or whose total annual payroll within either the current or the preceding calendar year, exceeds the sum of five hundred dollars ($500.00);

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all

the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this section;

(4) Any employing unit which, having become an employer under paragraph (1), (2) or (3) has not, under section 87-110, ceased to be an employer subject to this act; or

(5) For the effective period of its election pursuant to section 87-110 (c) any other employing unit which has elected to become fully subject to this act.

"Employment." (j) (1) 'Employment' subject to other provisions of this subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied,

(2) The term 'employment' shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (I) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state and with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act

if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

Excluded from "employment."

(6) The term 'employment' shall not include:

"Agricultural labor."

(A) Agricultural labor; The term 'agricultural labor' includes all services performed—

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity commonly known as agricultural commodities, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

"Farm" defined.

(5) As used in this section, the term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

Domestic service.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

Employment on a vessel.

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

Employment by member of family.

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and services performed by a child under the age of twenty-one (21) in the employ of his father or mother.

Employment by charitable organization.

(E) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or wild life and anglers clubs or associations, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Employment by state or political subdivision.

(F) Service performed in the employ of this state, or of any political subdivision thereof, or any instrumentality of this state or its political subdivisions.

Employment by other state or federal government.

(G) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks.

Employment coming under unemployment compensation system of federal government.

(H) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act.

Employment in distribution of newspapers.

(I) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under

the age of eighteen years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

Employment as real estate and insurance salesmen on commission basis.

(J) Services performed by real estate and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

"Employment office" defined.

(k) 'Employment office,' means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the commission may approve.

"Fund."

(l) 'Fund,' means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

"State."

(m) 'State,' includes, in addition to the states of the United States of America, Hawaii, the District of Columbia, Puerto Rico, the Virgin Islands, *Guam,* and the Dominion of Canada."

Repealing clause.

Section 2. All acts or parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 7, 1959.

CHAPTER 179

An Act Relating to the Creation of a Board of Control to Operate, Manage, Supervise and Maintain the Operations of One or More Irrigation Districts; Providing for Membership, Terms of Office, Bond, and Compensation; Providing for, and Deposit of Funds, Records and Inspection; Providing for Withdrawal of Districts, Allowing for the Hiring of a Manager or Managers;